IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.09.2005

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

SECOND APPEAL NO.192 OF 1994

Rameswari
(Legal representative of the
first defendant impleaded
after the disposal of the suit) .. Appellant

Vs.

1.R.Arumugham
2.Gnanammal
3.Samundeeswari
4.Sumathi (minor)
5.Jayakanthan (minor)
6.The Executive Officer,
Kurichi Town Panchayat
Pothanur Post,
Coimbatore
(RR4 and 5 minors
rep. by Guardian R2) .. Respondents

This appeal is preferred under Section 100 CPC against the judgment and decree dated 20.12.1993 made in AS No.2 of 1990 on the file of the Principal Subordinate Judge, Coimbatore, reversing the judgment and decree dated 17.11.1987 made in OS No.75 of 1981 on the file of the Principal District Munsif, Coimbatore.

For Appellant : Mr.T.R.Rajaraman

For Respondents: Mr.S.S.Mathivanan
for M/s.V.V.Lakshmi Puh
for RR1 to 5
Mr.N.Subburayalu for R6

WEB COPY

JUDGMENT

This second appeal has been brought forth from the judgment of the learned I Additional Subordinate Judge, Coimbatore made in AS No.2 of 1990, wherein the judgment of the trial court, namely District Munsif, Coimbatore made in OS No.75 of 1981 for permanent and mandatory injunction was reversed.

https://hcservices.ecourts.gov.in/hcservices/

2.The plaintiffs/respondents filed a suit seeking the said relief of permanent injunction against the first defendant and mandatory injunction against the second defendant with following allegations:

The first plaintiff purchased the property by a sale deed, dated 25.6.1945 under Ex.A.1 and from that time onwards, he was in continuous and uninterrupted possession of the same. Originally, there was an old house and the same was demolished in the year 1957. He obtained necessary permission from the second defendant Town Panchayat and he made certain modification in the house and continue to enjoy the same. While so, the first defendant made an attempt to trespass into the property three months prior to the filing of the suit, but the same was thwarted. In view of the old age, the first plaintiff was living with his son, who is having a residence nearby. Taking advantage of the said situation, the first defendant attempted to trespass into the property. Under the stated circumstances, the first plaintiff issued notice, which resulted in reply notice with false allegations. The plaintiff filed a plan for approval before the second respondent Town Panchayat for construction of a house and for the untenable objections made by the first defendant, the second defendant has not issued approval yet. Under the stated circumstances, there arose a cause of action for the plaintiff to file a suit for permanent injunction against the first defendant and also for mandatory injunction against the second defendant, directing him to issue approval for a new construction proposed by the plaintiff.

3.The suit was resisted by the first defendant stating that the plaintiff had no right or interest over the properties, in question and it belonged to the first defendant; that the properties, in question, are situated abutting the first defendant's property and that these two plots, which are situated on the West and North, formed part of the first defendant's property and he has been in enjoyment of the same all along and under the stated circumstances, it is a false case preferred by the plaintiff and the plaintiff is not entitled for the reliefs asked for. The second defendant remained ex parte.

4.Pending suit, the first plaintiff died and her legal representatives were added as plaintiffs 2 to 7. Likewise, the first defendant died and her legal representative was added as third defendant. The trial court framed necessary issues. On trial, the suit was dismissed. Aggrieved the plaintiffs took it on appeal in AS No.2 of 1990. On enquiry, the first appellate Court reversed the judgment of the trial court and granted decree in favour of the plaintiffs. Hence, this second appeal at the instance of the third defendant, who was added as legal representative of the first defendant.

5.At the time of admission, the following substantial questions of law were formulated for consideration:

"1.When the boundary description found in the plaintiffs'

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

own documents namely Ex.A-2 and Ex.A-11 and the oral evidence of P.Ws.2 and 3 are clear that the defendant is entitled to the property in the eastern side of the plaintiffs, is not the learned Subordinate Judge wrong in decreeing the suit in toto depriving the defendant's well recognised right and title in respect of the portion to suit property in front of her own house?

2.Is the learned Principal Subordinate Judge right in decreeing the suit based on Ex.A-1 when it is not established how the vendors who executed the document Ex.A-1 derived their title to the suit properties?

3.Is the learned Principal Subordinate Judge right in accepting the measurements found in the documents without adverting to the well known principle of law that the boundary will prevail over the extent?

4.When the documents Ex.B-1 and the oral evidence of defendant's witnesses and plaintiff's witnesses clearly establish that the defendant is entitled to the portion of suit property, in front of her house and that the same is being enjoyed by the defendant as per separate lane, is the learned Principal Subordinate Judge wrong in negativing the case of the defendant?

5.When the plaintiffs plead adverse possession, is not the learned Principal Subordinate Judge wrong in decreeing the suit without any proof that the plaintiffs are in exclusive possession of the suit properties to the knowledge of the defendant for more than the suit property?"

6.This Court has heard the learned counsel for the appellant and also the respondents.

7.As could be seen above, it was a suit for permanent injunction against the first defendant, whose legal representative was added as third defendant and mandatory injunction against the second defendant Town Panchayat. The case of the plaintiffs was that the first plaintiff purchased the property, in question, in the year 1945 under Ex.A.1 sale deed; that originally, there was a house property and he made certain modification in the year 1957 on permission granted by the second defendant and he has been in continuous enjoyment of the same; that taking advantage of the fact that the property of the first defendant is situated abutting the suit property, he attempted to interfere with the possession and enjoyment and the same was thwarted. Before filing the suit, the first plaintiff filed an application before the second defendant, seeking permission for a new construction in the site belonged to him, but on the untenable objections raised by the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

first defendant, the second defendant has not issued approval. The case was resisted by the first defendant stating that the suit property did not belong to the first plaintiff, but it belonged to the first defendant. The second defendant remained ex parte.

8.This Court made a thorough scrutiny of the materials available. The first plaintiff has sought for the relief of permanent injunction against the first defendant, stating that he purchased the property under Ex.A.1 in the year 1945 and he got title to the property and he has been in continuous possession of the same. The first appellate Court has clearly pointed out that both the description of the property under Ex.A.1 and the property in respect of which the relief was sought for, on comparison, found to be same. Apart from that, in the instant case, originally there was an occasion for the first plaintiff to file an application before the second defendant and got permission for modification. Insofar as the first defendant's case was concerned, there was a denial of title of the plaintiff. From the available materials, it could be seen that the suit properties are situated on the West and North of the first defendant's property and the first defendant, as D.W.1, has categorically admitted that originally, the first plaintiff's property is a house and the same was situated on the West of his house and the property covered under Ex.B.1 is situated on the East of the suit property and thus, it was a clear admission made by the first defendant at the time of examination in Court.

9.Added circumstance is that it was brought to the notice in the judgment of the first appellate court that though the first defendant has claimed that the property belonged to him and he is having his house and he has been paying tax, he has not produced any receipt in that regard. The learned counsel for the appellant would submit that the application for appointment of Commissioner was filed by the first defendant and the same was dismissed. If the first defendant was aggrieved over the order of dismissal of the said application for appointment of Commissioner, he should have approached this Court by filing revision, but not done so. Equally, when the suit was originally filed, no door number was given by the plaintiff, but subsequently an application for amendment was filed to include the door number and on contest, the application was allowed. The plaint was also amended and the door number was included. The first appellate Court has marshalled the evidence proper and has come to the conclusion that the property, in question, belonged to the plaintiff. On perusal of the materials available, this Court is of the considered opinion that the judgment of the first appellate Court has got to be sustained. This Court is unable to notice any reason to interfere with the judgment of the first appellate court and the second appeal has got to be dismissed.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

10.In the result, this second appeal is dismissed, leaving the parties to bear their costs.

Vvk

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Principal Subordinate Judge,
Coimbatore.

2.The Principal District Munsif,
Coimbatore.

+1cc to Mr.V.V.LakshmiNarayana, Advocate,(SR.38212)
+1cc to Mr.N. Subburayalu, Advocate,(SR.37934)

SRG(co)
rvr/20.9.

S.A.NO.192 OF 1994

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/